

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

APPELLANT PRO SE:

**ROBERT N. IMBODY**  
Brownsburg, Indiana

ATTORNEY FOR APPELLEE:

**SCOTT RICHARDS**  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

ROBERT IMBODY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 32A04-0608-CV-422
	)	
BANK OF AMERICA, N.A.,	)	
	)	
Appellee-Plaintiff.	)	

---

APPEAL FROM THE HENDRICKS SUPERIOR COURT  
The Honorable Karen M. Love, Judge  
Cause No. 32D03-0512-CC-182

---

**February 9, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## Case Summary

Robert Imbody appeals the trial court's summary judgment ruling in favor of Bank of America, N.A. ("BOA"). While Imbody sets out four issues, one is dispositive: whether summary judgment was properly granted. We affirm.

## Facts and Procedural History

On or about July 29, 2005, Imbody signed a retail installment contract and security agreement (the "contract") with "W. Hare and Son Inc.," a Noblesville automobile dealer. Appellant's App. at 8. Pursuant to the contract, Imbody agreed to purchase a 2005 Chevrolet Avalanche truck, VIN #3GNEK12Z25G288275, for a price of \$47,476.57 -- all of which was to be financed. *Id.* The contract required seventy-two payments in the amount of \$880.52 each,<sup>1</sup> to be paid monthly, beginning on September 12, 2005. *Id.* The lower left corner of the contract contained a box in which the following provision appeared:

ASSIGNMENT This Contract and Security Agreement is assigned to Bank of America, N/A. \_\_\_\_\_ the Assignee, phone \_\_\_\_\_. This assignment is made \_\_\_\_\_<sup>[2]</sup> under the terms of a separate agreement. \_\_\_\_\_ under the terms of the ASSIGNMENT OF SELLER on page 2 \_\_\_\_\_. This assignment is made with recourse.  
Seller: By (signature of Maria Adams) Date 07/29/2005.

*Id.* Imbody's signature appears to the right of the box. *Id.*

On December 30, 2005, BOA filed against Imbody a complaint for replevin, possession, and damages. *Id.* at 5. The complaint alleged that Imbody had "neglected and failed to pay the installments due under the Contract although numerous demands for

---

<sup>1</sup> Had Imbody paid on schedule per the contract's six-year term, his payments would have totaled \$63,397.44.

payment have been made.” *Id.* In the complaint, BOA also asserted that it “is the owner of and is entitled to the immediate possession” of the truck, cited the correct VIN #, noted the \$49,389.14 total payoff amount then due, set out the \$23,250.00 approximate value of the vehicle, and attached a copy of the contract. *Id.* at 5-9.

On February 19, 2006, Imbody responded with a pro se “denial” of each numbered paragraph of the complaint. *Id.* at 10. On April 18, 2006, BOA filed a motion for summary judgment, request for admissions, affidavit in support of replevin, and designation. *Id.* at 11-14. The next day, the court “received from [Imbody] a letter, Answer to [BOA’s] Request for Admissions, and Motion for Continuance.” *Id.* at 15-16. The court denied the motion, specifically advised Imbody that the Indiana Trial Rules applied to his case, and directed him to the self-help office of the Hendricks County Courthouse and to [www.in.gov/judiciary/rules](http://www.in.gov/judiciary/rules). *Id.* On May 24, 2006, Imbody filed his own request for admissions and an “affidavit of denial of execution of instrument.” *Id.* at 18. One week later, BOA denied all five of the allegations in Imbody’s request for admissions. *Id.* at 19.

On June 21, 2006, a hearing regarding BOA’s summary judgment motion was held. Imbody appeared, pro se, and challenged both the word “lease,” which appears in BOA’s request for admissions, and the reference to “mobile home,” which appears in the affidavit of replevin. *Tr.* at 6-7. Imbody also asserted that the contract was strictly between the dealer and him. In an attempt to support his assertion, Imbody focused on the “N/A” that he apparently believed appeared in the assignment box of the contract; he contended it should be

---

<sup>2</sup> In the actual contract, this space, and the two that follow, were small, blank boxes.

interpreted as meaning that the contract was not assignable or that assignment was not applicable. *Id.* at 7-9. The court<sup>3</sup> responded: “Well, again, I’m looking at this document, this contract, this retail contract that you referred to and it’s attached to the complaint says, assignment of the contract and security agreement is assigned to, and it appeared that there’s typing over the word assignment, and that appears to me to read Bank of America, NA [sic].”

*Id.* at 19.

The following colloquy ensued:

Judge: All right. So let me see if I’m following your line of logic here. You have a vehicle that you purchased.

Imbody: I attempted to purchase from the dealership, yes.

Judge: You have possession of that vehicle?

Imbody: Yes. Yes, Judge.

Judge: You’ve never made a payment on it.

Imbody: No, Judge.

Judge: And you’ve had possession of it for over a year?

Imbody: Uh, not quite a year, Judge, no.

Judge: Coming up on a year.

Imbody: Yes, Judge.

Judge: You’ve had contact with Bank of America requesting payment?

Imbody: They’ve contacted me, yes.

Judge: They sent out somebody to repossess the vehicle?

Imbody: Uh, yes, I believe Peter (not understandable) Recovery was the name of the company that I spoke with.

Judge: Have you contacted anybody at W. Hare and Son, Inc.?

Imbody: No. . . . I wasn’t actually aware of the assignment until sometime after when they, Bank of America contacted me.

*Id.* at 21-22. The court took the matter under advisement.

---

<sup>3</sup> Although Mark A. Smith was a Master Commissioner when he presided at the hearing, the transcript refers to him as “Judge.”

On July 27, 2006, the court issued its “Order Granting Summary Judgment & for Possession of Personal Property.” Appellant’s App. at 20. Within the order, the court reiterated the relevant facts and then stated:

The Court finds [Imbody’s] arguments wholly without merit. The [contract] does in fact contain an assignment provision. Although somewhat difficult to read, the assignment clause does identify Bank of America, N/A as the assignee. Moreover, [Imbody] admitted during his argument that he has possession of the vehicle but has made no payments for nearly a full year. Accordingly, the Court finds that there are no genuine issues of any material facts and [BOA] is entitled to judgment as a matter of law.

*Id.*

On July 28, 2006, Imbody filed a motion to correct error, a brief in support thereof, various exhibits,<sup>4</sup> and a motion to stay judgment. *Id.* at 22-35. After the denial of these motions, Imbody began his appeal. In August 2006, the sheriff seized the truck. *Id.* at 3.

### **Discussion and Decision**

Initially, we observe that

[a]n appellant who proceeds pro se is held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action. While we prefer to decide cases on their merits, we will deem alleged errors waived where an appellant’s noncompliance with the rules of appellate procedure is so substantial it impedes our appellate consideration of the errors. The purpose of our appellate rules, especially Indiana Appellate Rule 46, is to aid and expedite review and to relieve the appellate court of the burden of searching the record and briefing the case. Indiana Appellate Rule 46(A)(8)(a) states that the argument section of an appellant’s brief must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the

---

<sup>4</sup> Interestingly, one of Imbody’s exhibits is a Hare Chevrolet\*Oldsmobile “retail order for a motor vehicle.” Appellant’s App. at 29. This document is dated July 29, 2005, includes the description, VIN, etc. for the truck, and has “BANK OF AMERICA” typed on its lower right corner – next to Imbody’s signature. *Id.*

Appendix or parts of the Record on Appeal relied on. It is well settled that we will not consider an appellant's assertion on appeal when he has not presented cogent argument supported by authority and references to the record as required by the rules. Additionally, we will not become an advocate for a party, nor will we address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood.

*Thacker v. Wentzel*, 797 N.E.2d 342, 345 (Ind. Ct. App. 2003) (citations and quotation marks omitted).

Imbody's statement of the case contains no page citations. His statement of the facts is largely a rehash -- albeit a numbered rehash with citations to the appendix -- of his statement of the case. The entire four-part argument section of Imbody's brief, which is comprised of less than two pages, contains no citations to case law. While Imbody did cite a few trial rules and one section of the Indiana Code, he fails to present contentions supported by cognizable reasoning. When no cognizable argument is presented, our consideration of the issue is waived. *See Wright v. Elston*, 701 N.E.2d 1227, 1231 (Ind. Ct. App. 1998), *trans. denied*.

Nevertheless, we will briefly address the trial court's ruling on the merits. Our standard of review is the same as that used by the trial court. Summary judgment is appropriate only where the evidence shows that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). "All facts and reasonable inferences drawn from those facts are construed in favor of the nonmoving party." *Mangold v. Ind. Dep't of Natural Res.*, 756 N.E.2d 970, 973 (Ind. 2001). Our review of a summary judgment motion is limited to those materials designated to the trial court. *See id.* If the designated facts demonstrated by the moving party have sustained the "initial

burden of proving the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law, the party opposing summary judgment must respond by designating specific facts establishing a genuine issue for trial.” *Bushong v. Williamson*, 790 N.E.2d 467, 474 (Ind. 2003). “If the opposing party fails to meet its responsive burden, the court shall render summary judgment.” *Id.* This court may sustain a summary judgment on any theory supported by the designated evidence. *Bernstein v. Gavin*, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000), *trans. denied*.

Our review of the materials presented reveals BOA’s request for admissions does refer to a “lease” instead of a “sale.” However, this obvious scrivener’s error is mitigated by the fact that the request cites an attached exhibit, which includes the proper word, “sale.” Also, the affidavit in support of replevin mistakenly references a “mobile home.” Yet, any actual confusion caused by what was likely a “cutting and pasting” error, certainly was minimized by the fact that, “2005 Chevrolet Avalanche 4wd, VIN #3GNEK12Z25G288275,” appears in the immediately preceding paragraph of the very same affidavit. Finally, the assignment clause does *not* simply say, “N/A.”; rather, it says, “Bank of America, N/A.” The fact that whoever typed it into the assignment clause did a poor job of placing it on the line, making it somewhat difficult to read, does not change the meaning or effect of the assignment’s language. That is, the dealer’s rights under the contract were assigned to BOA. Imbody, by his own admissions, signed the contract to purchase the truck, took possession of the truck, but never made any payments on the truck to any entity. Given these undisputed facts, the law was in BOA’s favor, and summary judgment was properly granted.

Affirmed.

SULLIVAN, J., and SHARPNACK, J., concur.